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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/978,127	10/16/2001	Steven Curtis Zicker	IR 6493-02	3786
23909	7590	12/04/2007	EXAMINER	
COLGATE-PALMOLIVE COMPANY			VAKILI, ZOHREH	
909 RIVER ROAD			ART UNIT	PAPER NUMBER
PISCATAWAY, NJ 08855			1614	
MAIL DATE	DELIVERY MODE			
12/04/2007	PAPER			

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/978,127	ZICKER ET AL.
	Examiner Zohreh Vakili	Art Unit 1614

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 01 October 2007.  
 2a) This action is FINAL.      2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 39 and 44-47 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 39 and 44-47 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO/SB/08)  
     Paper No(s)/Mail Date \_\_\_\_\_

4) Interview Summary (PTO-413)  
     Paper No(s)/Mail Date. \_\_\_\_\_

5) Notice of Informal Patent Application

6) Other: \_\_\_\_\_

**DETAILED ACTION**

Claims 39 and 44-47 are presented for examination.

***Status of the Case***

The Amendments and Remarks, filed October 1, 2007, have been received and entered into the application.

Applicant's arguments, filed October 1, 2007, have been fully considered but they are not deemed to be persuasive. Rejections not reiterated from previous Office Actions are hereby withdrawn. The following rejections are either reiterated or newly applied. They constitute the complete set of rejections presently being applied to the instant application.

***Maintained Claim Rejections - 35 USC § 103***

The rejection of claims 39 and 44-47 under 35 U.S.C. 103(a) over Harper WO 00/44375 in view of Hamilton (U.S. Patent No. 6,335,361 B1) has been maintained for the reasons stated in the prior Office Action June 29, 2007 and further in view of the following remarks.

***Response to Arguments***

Applicant argues that Harper discloses using vitamin E and vitamin C for treating oxidative stress in a cat/dog and to treat a disorder associated with oxidative stress. Applicant further argues that though they are both antioxidants, they each have more than one mechanism of action and Harper does not teach their use for affecting learning ability in aged pets.

Harper discloses using vitamin E and vitamin C to overcome the problem of oxidative stress in a cat and dog and to prevent or treat a disorder affected by oxidative stress. Disorders such as ageing and neurodegenerative disease are caused by oxidative stress (see page 13, lines 6-14) and are treatable using the disclosed composition of Harper. As Applicant has mentioned, vitamin C and vitamin E are antioxidants that have several mechanisms of action. Applicant argues that the present invention differs from Harper because Harper does not teach that vitamin C and vitamin E affect learning in aged pets. However, one of the actions of vitamin C and E is to prevent or treat ageing in pets as taught by Harper due to its antioxidative action. Applicant has not provided any reasoning or evidence as to why the combined antioxidative effect for the treatment of aging in the aged pets would not have necessarily resulted from the combination of Harper and Hamilton. Administration of the same products, for example, vitamin E, vitamin C, lipoic acid and carnitine, to an

identical host (i.e. an aged pet) would have the same effect on learning as that claimed because products of identical compounds cannot have mutually exclusive properties.

Applicant in his remarks argues that the prior art references combined do not teach the claimed invention. Applicant is reminded that the obviousness rejection is not an anticipation rejection. Harper and Hamilton clearly teach the performance of the practice for aged companion pets to receive the same material. In obviousness rejection a combination of references is used, and the references are relied upon in combination and are not meant to be considered separately as in a vacuum. It is the combination of all of the cited and relied upon references that make up the state of the art with regard to the claimed invention. Applicant's claimed invention fails to patentably distinguish over the state of the art represented by the combination of the cited references. *In re Young*, 403 F.2d 754, 159 USPQ 725(CCPA 1968); *In re Keller* 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

Moreover, it is noted that rejections under 35 U.S.C. 103(a) are based on combinations of references, where the secondary references are cited to reconcile the deficiencies of the primary reference with the knowledge generally available to one ordinary skill in the art to show that the differences between Applicant's invention and the prior art are such that they would have been modifications that were *prima facie* obvious to the skilled artisan. It is noted that the claimed invention is not required to be expressly suggested in its entirety by any one or all of the references cited under 35 U.S.C. 103(a). Rather, the test is what the combined teachings of the references would

have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

For these reasons, and those already made of record at pages 2-5 of the previous Office Action dated June 29, 2007, of which such reasons are incorporated herein by reference, rejection of claims 39 and 44-47 remain proper and is maintained.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136 (a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Zohreh Vakili whose telephone number is 571-272-3099. The examiner can normally be reached on 9am to 6:00pm Monday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ardin Marschel can be reached on 571-272-0718. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Examiner  
Zohreh Vakili  
Art Unit 1614

November 28, 2007

*Ardin Marschel 12/3/07*  
ARDIN H. MARSCHEL  
SUPERVISORY PATENT EXAMINER